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September 1, 2015

Greg Bell
ATK Space Systems
9617 Distribution Ave
San Diego CA 92121

VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED

CT Corporation System
818 W. Seventh Street STE 930
Los Angeles, CA 90017

**Re: Clean Water Act Notice of Intent to Sue/60-Day Notice Letter
ATK Space Systems Violations of General Industrial Permit**

Dear Mr. Bell:

Please accept this letter on behalf of the Coastal Environmental Rights Foundation (CERF) regarding ATK Space System and Orbital ATK Inc's (collectively "ATK Owners and/or Operators") violations of the State Water Resources Control Board Water Quality Order Nos. 97-03-DWQ and 2014-0057-DWQ, Natural Pollutant Discharge Elimination System (NPDES), General Permit No. CAS000001, and Waste Discharge Requirements for Discharges of Storm Water Associated With Industrial Activities Excluding Construction Activities (General Industrial Permit).¹ This letter constitutes CERF's notice of intent to sue for violations of the Clean Water Act and General Industrial Permit for ATK Space Systems, located at 9617 Distribution Ave, CA 92121 ("Facility" or "ATK"), as set forth in more detail below.²

Section 505(b) of the Clean Water Act requires that sixty (60) days prior to the initiation of a citizen's civil lawsuit in Federal District Court under Section 505(a) of the Act, a citizen must give notice of the violations and the intent to sue to the violator, the Administrator of the U.S. Environmental Protection Agency, the Regional Administrator of the U.S. Environmental Protection Agency for the region in which the violations have occurred, the U.S. Attorney General, and the Chief Administrative Officer for the State in which the violations have occurred (33 U.S.C. § 1365(b)(1)(A)). This letter provides notice of ATK's Clean Water Act violations and CERF's intent to sue.

I. Coastal Environmental Rights Foundation (CERF)

CERF is a non-profit public benefit corporation organized under the laws of the State of

¹ The Industrial Permit amendments, pursuant to Order No. 2014-0057-DWQ, become effective July 1, 2015. All references are to the General Industrial Permit prior to modification pursuant to Order No. 2014-0057-DWQ are to the "General Industrial Permit." All references to the Permit as modified by Order No. 2014-0057-DWQ are to the "New General Industrial Permit."

² The new Facility site address is listed as 7130 Miramar Road, Suite 100B, San Diego, CA 92121. Both locations are collectively referred to as "Facility" or "ATK."

California with its main office in Encinitas, CA. CERF is dedicated to the preservation, protection, and defense of the environment, the wildlife, and the natural resources of the California Coast. Members of CERF use and enjoy the waters into which pollutants from ATK's ongoing illegal activities are discharged into Carrol Canyon Creek, Los Penasquitos Creek, downstream to Los Penasquitos Lagoon, and eventually the Pacific Ocean.

The public and members of CERF use Carroll Canyon Creek, Los Penasquitos Creek, and Los Penasquitos Lagoon to fish, sail, boat, kayak, surf, swim, scuba dive, birdwatch, view wildlife, and to engage in scientific studies. The discharge of pollutants by the ATK Facility affects and impairs each of these uses. Thus, the interests of CERF's members have been, are being, and will continue to be adversely affected by ATK Owners and/or Operators' failure to comply with the Clean Water Act and the General Industrial Permit.

II. Storm Water Pollution and the General Industrial Permit

A. Duty to Comply

Under the Clean Water Act, the discharge of any pollutant to a water of the United States is unlawful except in compliance with certain provisions of the Clean Water Act. (See 33 U.S.C. § 1311 (a)). In California, any person who discharges storm water associated with industrial activity must comply with the terms of the General Industrial Permit in order to lawfully discharge. ATK enrolled as a discharger subject to the General Industrial Permit on January 26, 2005 for its facility at 9617 Distribution Ave San Diego California 92121. On August 13, 2015, ATK submitted a Notice of Intent for enrollment under the New General Industrial Permit (new WDID No. 9 371026028).

Pursuant to the General Industrial Permit, a facility operator must comply with all conditions of the General Industrial Permit. Failure to comply with the General Industrial Permit is a Clean Water Act violation. (General Industrial Permit, § C.1; New General Industrial Permit §XXI.A. ["Permit noncompliance constitutes a violation of the Clean Water Act and the Water Code..."]). Any non-compliance further exposes an owner/operator to an (a) enforcement action; (b) General Industrial Permit termination, revocation and re-issuance, or modification; or (c) denial of a General Industrial Permit renewal application. (*Id.*). As an enrollee, ATK has a duty to comply with the General Industrial Permit and is subject to all of the provisions therein.

B. The ATK Facility Discharges Contaminated Storm Water in Violation of the General Industrial Permit

Discharge Prohibition A(2) of the General Industrial Permit and Section III.C. of the New General Industrial Permit prohibit storm water discharges and authorized non-storm water discharges which cause or threaten to cause pollution, contamination, or nuisance. Receiving Water Limitation C(1) of the Storm Water Permit prohibits storm water discharges to surface or groundwater that adversely impact human health or the environment. In addition, receiving Water Limitation C(2) prohibits storm water discharges and authorized non-storm water discharges, which cause or contribute to an exceedance of any water quality standards, such as the CTR or applicable Basin Plan water quality standards. (See New Industrial General Permit, §III.D.; §VI.A.). "The California Toxics Rule ("CTR"), 40 C.F.R. 131.38, is an applicable

water quality standard." (*Baykeeper v. Kramer Metals, Inc.* (C.D.Cal. 2009) 619 F.Supp.2d 914, 926). "In sum, the CTR is a water quality standard in the General Permit, Receiving Water Limitation C(2). A permittee violates Receiving Water Limitation C(2) when it 'causes or contributes to an exceedance of' such a standard, including the CTR." (*Id.* at 927).

If a discharger violates Water Quality Standards, the General Industrial Permit and the Clean Water Act require that the discharger implement more stringent controls necessary to meet such Water Quality Standards.(General Industrial Permit, Fact Sheet p. viii; 33 U.S.C. § 1311(b)(1)(C)). The ATK and/or Operators have failed to comply with this requirement, routinely violating Water Quality Standards without implementing BMPs to achieve BAT/BCT or revising the ATK SWPPP pursuant to section (C)(3).

The monitoring data for the ATK Facility indicates consistent, ongoing exceedances and violations of the General Industrial Permit. The ATK Owners and/or Operators have discharged and continue to discharge storm water containing pollutants at levels in violation of the above listed prohibitions and limitations during every significant rain event. ATK's sampling data reflects 31 discharge violations. ATK's own sampling data is not subject to impeachment. (*Baykeeper, supra*, 619 F.Supp. 2d at 927, citing *Sierra Club v. Union Oil Co. of Cal.*, (9th Cir. 1987) 813 F.2d 1480, 1492 ["when a permittee's reports indicate that the permittee has exceeded permit limitations, the permittee may not impeach its own reports by showing sampling error"]).

As reflected below, for every single rain event the ATK Owners and/or Operators have monitored, the Facility has exceeded the Iron benchmark. At times, the exceedances for zinc have been as high as almost **ten times** the benchmark. Notably, until the second rain event in 2014-2015, ATK failed to sample Drain #2 for all constituents included in the Drain #1 monitoring, despite the fact that such constituents are identified as potential pollutants in ATK's SWPPP without qualification. Indeed, the April 24, 2015 monitoring data for Drain #2 reveals exceedances of these additional constituents, including copper and zinc. Therefore, it is likely Drain #2 also exceeded CTR thresholds for copper and zinc during previous rain events despite ATK's failure to monitor these constituents. Thus, the violations listed below are potentially an underestimate.

No.	Date	Location	Parameter	Units	Result	Benchmark/ WQO
1	10/19/2010	Bldg 7 Drain #2	pH	SU	9.18	6.0-9.0
2	10/19/2010	Bldg 4 Drain #1	pH	SU	9.05	6.0-9.0
3	2/16/2011	Bldg 4 Drain #1	Zinc	mg/L	.29	.12
4	11/4/2011	Bldg 4 Drain #1	Zinc	mg/L	.242	.12
5	11/4/2011	Bldg 7 Drain #2	Specific Conductance	umhos/cm	334	200
6	11/4/2011	Bldg 7 Drain #2	TSS	mg/L	185	100
7	12/12/2011	Bldg 4 Drain #1	Copper	mg/L	.08	.009
8	12/12/2011	Bldg 4 Drain #1	Zinc	mg/L	.596	.12
9	12/12/2011	Bldg 7 Drain #2	pH	SU	9.18	6.0-9.0
10	10/11/2012	Bldg 4 Drain #1	Copper	mg/L	.08	.009

11	10/11/2012	Bldg 4 Drain #1	Zinc	mg/L	1.18	.12
12	10/11/2012	Bldg 7 Drain #2	Specific Conductance	umhos/cm	273	200
13	12/13/2012	Bldg 4 Drain #1	Zinc	mg/L	.191	.12
14	10/9/2013	Bldg 4 Drain #1	Copper	mg/L	.1	.009
15	10/9/2013	Bldg 4 Drain #1	Zinc	mg/L	.76	.12
16	10/9/2013	Bldg 4 Drain #1	TOC	mg/L	123	110
17	10/9/2013	Bldg 4 Drain #1	Specific Conductance	umhos/cm	335	200
18	10/9/2013	Bldg 4 Drain #1	TSS	mg/L	144	100
19	10/9/2013	Bldg 7 Drain #2	TSS	mg/L	178	100
20	2/6/2014	Bldg 4 Drain #1	Copper	mg/L	.08	.009
21	2/6/2014	Bldg 4 Drain #1	Zinc	mg/L	.47	.12
22	2/6/2014	Bldg 4 Drain #1	Specific Conductance	umhos/cm	504	200
23	2/6/2014	Bldg 7 Drain #2	Specific Conductance	umhos/cm	219	200
24	2/6/2014	Bldg 7 Drain #2	TSS	mg/L	189	100
25	12/2/2014	Bldg 4 Drain #1	Copper	mg/L	.08	.009
26	12/2/2014	Bldg 4 Drain #1	Zinc	mg/L	.7	.12
27	4/24/2015	Bldg 4 Drain #1	Copper	mg/L	.1	.009
28	4/24/2015	Bldg 4 Drain #1	Zinc	mg/L	.82	.12
29	4/24/2015	Bldg 4 Drain #1	Specific Conductance	umhos/cm	337	200
30	4/24/2015	Bldg 7 Drain #2	Copper	mg/L	.08	.009
31	4/24/2015	Bldg 7 Drain #2	Zinc	mg/L	.58	.12
*Data was erroneously reported in ug/L in Annual Report						

Every day ATK Owners and/or Operators discharged or continue to discharge polluted storm water in violation of the Discharge Prohibitions and Receiving Water Limitations of the General Industrial Permit and New General Industrial Permit is a separate and distinct violation of the Permits and Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a). The ATK Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since September 1, 2010. These violations are ongoing and will continue each day contaminated storm water is discharged in violation of the requirements of the Permits.

C. Inadequate Storm Water Pollution Prevention Plan

One of the main requirements of the General Industrial Permit (and New General Industrial Permit) is the Storm Water Pollution Prevention Plan (SWPPP). (General Industrial Permit §A; New General Industrial Permit, Finding I.54, §X). ATK has not developed an adequate SWPPP as required by the Permits.

The ATK SWPPP dated June 2015 fails to note that the ATK Facility discharges into Carroll Canyon Creek, which confluences with Los Penasquitos Creek before meeting Los Penasquitos Lagoon. The SWPPP further fails to note that Los Penasquitos Creek is impaired for Selenium, Total Dissolved Solids, Nitrogen, and pathogens. These pollutants are likely to be associated with industrial storm water. Per section X.G.2.a.ix of the New General Industrial Permit the ATK Owners and/or Operators are required to assess the potential industrial

pollutant sources to receiving waters with 303(d) listed impairments identified in Appendix 3. (New General Industrial Permit, §X.G.2.a.ix). However, such analysis was not conducted.

Not only does the ATK SWPPP fail to mention receiving water bodies, the Facility site map fails to do so as well. In fact, the Facility site map lacks virtually all of the requisite elements per §X.E. of the New General Industrial Permit. It fails to include: a legend (§X.E.1); the storm water drainage areas and municipal storm drain inlets (§X.E.3.a); the direction of flow and sample location (§X.E.3.b); identification of structural control measures (§X.E.3.c.); locations where materials are directly exposed to precipitation and the locations where significant spills or leaks have occurred (§X.E.3.e); identification of storage areas, storage tanks, shipping and receiving areas, vehicle and equipment storage and maintenance, material handling and processing, waste treatment, waste disposal, dust generation, particulate generation, cleaning and rinsing areas, and areas of industrial activity (§X.E.3.f). These areas are noted in the SWPPP – and refer to the Facility site map for identification – but the site map does not include any such detail.

Lastly, despite the consistent and continuous water quality violations established by ATK's monitoring data, the SWPPP BMPs have not been updated to address such exceedances.

Every day the ATK Owners and/or Operators operate the Facility without an adequate SWPPP constitutes a separate and distinct violation of the General Industrial Permit, the New General Industrial Permit, and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). The ATK Owners and/or Operators have been in daily and continuous violation of the General Industrial Permit since at least September 1, 2010. These violations are ongoing and the ATK Owners and/or Operators will continue to be in violation every day they fail to address the SWPPP inadequacies. Thus, the ATK Owners and/or Operators are liable for civil penalties of up to \$37,500 per day of violation for 1,830 violations of the General Industrial Permit and the Clean Water Act.

III. Remedies

Upon expiration of the 60-day period, CERF will file a citizen suit under Section 505(a) of the Clean Water Act for the above-referenced violations. During the 60-day notice period, however, CERF is willing to discuss effective remedies for the violation noted in this letter. If you wish to pursue such discussions in the absence of litigation, it is suggested that you initiate those discussions immediately. If good faith negotiations are not being made, at the close of the 60-day notice period, CERF will move forward expeditiously with litigation.

ATK must develop and implement a SWPPP which complies with all elements required in the New General Industrial Permit, and address the consistent, numerous, and ongoing water quality violations at the Facility. Should the ATK Owners and/or Operators fail to do so, CERF will file an action against ATK for its prior, current, and anticipated violations of the Clean Water Act.

CERF's action will seek all remedies available under the Clean Water Act §1365(a)(d). CERF will seek the maximum penalty available under the law which is \$37,500 per day. CERF

may further seek a court order to prevent ATK from discharging pollutants. Lastly, section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), permits prevailing parties to recover costs, including attorneys' and experts' fees. CERF will seek to recover all of its costs and fees pursuant to section 505(d).

IV. Conclusion

CERF has retained legal counsel to represent it in this matter. Please direct all communications to Coast Law Group:

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CERF will entertain settlement discussions during the 60-day notice period. Should you wish to pursue settlement, please contact Coast Law Group LLP at your earliest convenience.

Sincerely,

COAST LAW GROUP LLP



Marco A. Gonzalez



Livia Borak

Attorneys for
Coastal Environmental Rights Foundation

CC:

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